



**ROLE OF THE SECRETARY GENERAL
IN
THE UNITED NATIONS**

DISSERTATION SUBMITTED FOR THE DEGREE OF

Master of Philosophy
IN
Political Science

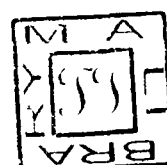
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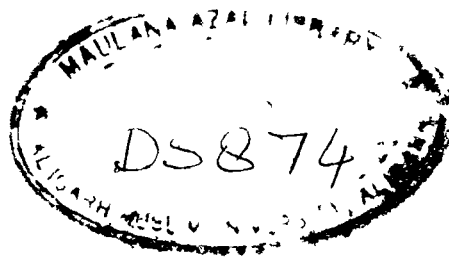


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INTRODUCTION

INTRODUCTION

The Secretary-General is appointed by the General Assembly upon the recommendation of the Security Council; the concurrence of the Permanent Members is compulsory. The logic behind this procedure of appointment is given that the Secretary-General must enjoy the confidence of the Big Five so that he could play his role effectively. Consequently, the practice has been for the Security Council to agree upon a candidate and for the Assembly to appoint that candidate. In fact, the Secretary-General is the Permanent Members' "nominee".

The Secretary-General is the chief administrative officer and also a high political officer of the United Nations. He is assigned to play a central role as an administrator and as a peace-maker. He is recognised as the leader and head of the staff of International Council of Servants and it is his prestigious duty to maintain the international character, loyalty, independence, integrity and effectiveness of the Secretariat. As it in turn will help diminish world tension under his leadership, he is expected to manifest Himalayan power in having sanction against Colonial Powers like the Pretoria regime and to face thorny criticism with a smiling face.

It is the purpose of this study to explain that the Secretary General, who is expected to play such a vital role should not be only "nominee" of the Big Five. It is necessary in the interest of of international society to amend the provision (Article 97)

regarding his appointment in such a manner that he could function fearlessly, independently, effectively, efficiently and impartially.

For the completion of this work, I am highly grateful to Dr. Akhter Majeed for supervising the entire project from its beginning. It is due to his able and intellectual guidance, constant encouragement and unhesitant help that the work could be completed in time. My gratitude to him is unbounded.

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CHAPTER I

APPOINTMENT OF THE SECRETARY-GENERAL

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APPOINTMENT OF THE SECRETARY-GENERAL

Article 97 of the UN Charter provides that the "Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council".

The General Assembly decided, during the first session in 1946 that, "both nomination and appointment should be discussed at private meetings, and a vote ... if taken, shall be by a secret ballot". The Assembly's Rules of Procedures accordingly provide that "the General Assembly shall consider the (Security Council's) recommendation and vote upon it by secret ballot in private meeting" (Rule 142).

At San Francisco, the smaller states emphatically argued that the Secretary-General should be elected by the General Assembly alone and if the Security Council too is allowed to participate the veto should not apply. This suggestion was not accepted and finally it was agreed that the Secretary-General should be appointed by the General Assembly upon the recommendation of the Security Council; the concurrence of the permanent members was made compulsory. No provision was made regarding the terms of office or re-eligibility.

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1. Ian Brownlie, Basic Documents in International Law (Oxford: Clarendon Press, 1967), p. 27.
 2. Sydney D. Bailly, The General Assembly of the United Nations (New Delhi: Willy Eastern Private Ltd., 1960), p. 188.
 3. L.M. Goodrich, E. Hambro and A.P. Simons, Charter of the United Nations: Commentary and Documents (New York: Columbia University Press, 1969), pp. 573-74.

The Charter's provision on the method of appointing the Secretary-General was approved due to the insistence of the major powers. The Big Powers emphasized that if the Secretary-General, who is being vested with important political responsibilities, was to be effective in his role, he would need to have the confidence of the major powers. Furthermore, the League Secretary-General had been appointed by the Council with Assembly's approval.⁴ Consequently, the practice has been for the Security Council to agree upon a candidate and for the Assembly to appoint that candidate, so that the appointment is in effect that of the permanent members' nominee.⁵

There is no provision regarding the term of office of the Secretary-General. At the San Francisco conference, the sponsoring Governments proposed that the Secretary-General should be elected for a three-year term and be eligible for re-election. When the smaller states finally yielded on the method of appointment, accepting the requirement of Security Council recommendation and permanent members' concurrence, they insisted that the provision for a three-year term be dropped, on the ground that a short-term would make the Secretary-General too dependent on the permanent members.⁶ He would work in the knowledge that his chances of

4. Ibid., p. 581. See also L.M. Goodrich, The United Nations in Changing World (New York: Columbia University Press, 1974), p. 83.

5. D.W. Greig, International Law (London: Butler Worths, 1970), p. 583.

6. L.M. Goodrich, E. Hambro and A.P. Simons, n. 3, p. 582.

re-election would be small if he were to incur the displeasure of one of the permanent members.

The Charter being silent about the term of office of the Secretary-General, in 1946, the General Assembly adopted a resolution which now governs the term of appointment. It provided that the first Secretary-General should be appointed for five years with the possibility of appointment being open at the end of that period for an additional five year term. Both the Assembly and the Security Council, however, were left free to modify the term in future. The Assembly also stated that owing to the confidential nature of the office, no member of the United Nations should offer a retiring Secretary-General a government position immediately after retirement nor should the individual accept such a position if it were offered.

Under the said resolution the first Secretary-General was appointed for a five year term, the appointment to be open for renewal for a further tenure of five years. At the end of Trygve Lie's first term of office in 1950, there was a complete deadlock in the Security Council over the appointment of the successor. The Soviet Union refused to accept Lie on account of his handling of the Korean situation, while the United States would vote against any alternative candidate. In the absence of any recommendation

7. D.W. Greig, n. 5, p. 583.

8. S.S. Goodspeed, The Nature and Function of International Organization (Oxford; Oxford University Press, 1956), p. 344.

from the Security Council, the General Assembly resolved that Lie should remain in office for a further period of three years. The Assembly took this step not by extending the term of office laid down in the 1946 resolution, but by reference to the principle of "effectiveness".⁹ The Charter, to be effective, required the uninterrupted exercise of the functions of the Secretary-General. As the appointment of the Secretary-General in accordance with Article 97 was not possible, the Assembly claimed that it possessed residuary powers in relation to the position of the Secretary-General and under the Charter in general. While no such power was granted to the Assembly by the Charter, it could also be argued that there was nothing in the Charter to prevent the Assembly taking such a course.

Lie was, however, not re-nominated but continued in office¹⁰ for three years on an Assembly vote of 46-5-8. However, Lie's dynamic and sometimes flamboyant interpretation of his office was never fully accepted by the major powers. Generally speaking, the major powers favoured a Secretary-General who was more concerned with administrative rather than diplomatic matters. Lie described the dilemma in this way: "Everything is in order as long as I agree with a particular Government, but as soon as I don't - 'Aren't we paying you? Aren't you a servant of the Government? You are

9. D.W. Greig, n. 5, p. 584.

10. H.G. Nicholas, The United Nations as a Political Institution (New York: Oxford University Press, 1959), p. 56.

an administrator. Why do you talk?"

The smaller powers, on the other hand, championed a more active and stronger role for the Secretary-General. The first Secretary-General of the League of Nations, Sir Eric Drummond, was struck by the same situation and commented at one point; "The smaller the country the more trust it placed in the Secretary-¹² General".

The U.S. Government initially supported Lie's election and vigorously pushed for his re-election. But the U.S. attitude toward Lie, which initially supported his election and vigorously supported his re-election, fluctuated from time to time because of his effort on the Iranian question and the Berlin blockade irritating the United States. Hence, criticism of Trygve Lie by the United States increased sharply with his attempt to seat the Chinese Communist government in the United Nations, but he became the West's "fair¹³ haired boy" during the Korean War.

In February, 1951, the Soviet Russia refused to recognize Trygve Lie as Secretary-General. They insulted him personally, and boycotted him socially and officially. The conduct, however, much it might be deplored, was effective in forcing even Lie's warmest supporters to realize that in consequence he was largely crippled

11. R.I. Miller, Dag Hammarskjöld and Crisis Diplomacy (New York: Oceana Publications, Inc., 1961), p. 7.

12. Ibid., p. 7.

13. Ibid.

in his endeavours as Secretary-General to serve the full interest of the Organization and to retain the confidence of all member states. At the same time Lie's position was further weakened by development on another front - attacks launched on his Secretariat¹⁴ from inside the United States.

The refusal of the Soviet Union and other Communist states to recognize the validity of the General Assembly's action and their complete boycott of Lie led him to the conviction that he should resign in order that the full influence of the office might¹⁵ be exercised in the cause of peace, and with his family sailed home in May, 1953.

The second Secretary-General, Dag Hammarskjöld, on French proposal, was recommended by the Security Council at a time when the Big Two (the USSR and the USA) were determined not to agree with each other. His name was recommended on March 31, 1953, and confirmed by the General Assembly on April 7, 1953. Earlier, the US proposal in favour of Lester B. Pearson was vetoed. Fortunately a struggle ahead was avoided and the French proposal was accepted¹⁶ by all the Big Five; the matter was brought to "swift close".

During the first seven years of the tenure, the situations, fortunately, did not involve Hammarskjöld in fundamental East-West

14. H.G. Nicholas, n. 10, p. 56.

15. L.M. Goodrich, E. Hambro and A.D. Simons, n. 3, p. 583.

16. R.I. Miller, n. 11,

problems. Consequently, the Secretary-General enjoyed a degree of manoeuvrability, but when Hammarskjöld met his death in 1961, he had been the object of violent attack by the Soviet Union over his conduct of the UN operation in the Congo. The attack was accompanied by a demand that the office of the Secretary-General be recognized so as to provide, through structural and procedural arrangements, the impartiality which the Soviet Union claimed, had been impossible to achieve in a single person.¹⁷

However, the Soviet Chairman, N.S. Khrushchev, stated on September 23, 1961: "we consider it advisable to set up, in the place of a Secretary-General who is at present the interpreter and executor of the decisions of the General Assembly and the Security Council, a collective executive organ of the United Nations consisting of three persons each of whom would represent a certain group of states".¹⁸ It was known as "Troika" ; three equal Secretaries General - one representing the East, one the West and one representing non-aligned countries. ('Troika' is the Russian word for a carriage shown by three horses). The basis for his demand was his conviction that "while there are neutral countries,¹⁹ there are no neutral men".

A few days later (October 3), the Soviet leader attacked

17. L.M. Goodrich, n. 4, p. 87.

18. M. Waters, The United Nations: International Administration (New York: The Macmillan Co., 1967), p. 161.

19. U Thant, View from the UN (London: David and Charles Newton, 1978), p. 4.

the Secretary-General again, saying: "Everyone has heard how vigorously the imperialist countries defend the attitude of Mr. Hammarskjold. It is not clear whose interests he interprets and executes, whose 'saint' he is?"²⁰

To avoid misinterpretation, Khrushchev emphasized, "I want to reaffirm that we do not trust Mr. Hammarskjold and cannot trust him. If he himself does not muster up enough courage to resign, so to say, in a chivalrous manner, then we shall draw the necessary conclusions from the situation ... it is not proper for a man who has flouted elementary justice to hold such an important post as that of Secretary-General".²¹

Fortunately, Khrushchev's position had very little support at the United Nations. First of all, it was obvious to most of the governments that the uncommitted or non-aligned nations could be divided into further sub-categories. For example, the pro-Western neutrality of country A could be contrasted with pro-Soviet Neutrality of country B and with the genuine neutrality of country C. The truth of such differing ideological orientations came out clearly at the conference of Heads of States of Non-aligned countries, held in Belgrade from September 1 to 6, 1961, in which the then Prime Minister of India, Jawaharlal Nehru, "de facto" leader of the non-aligned countries, played a leading role. He implicitly

20. R.I. Miller, n. 11, p. 329.

21. Ibid.

rejected the concept of "three main currents" in international affairs. Besides, many delegates who attended the conference felt that the Troika concept was against the letter and spirit of the UN Charter and if put into practice, would have rendered the whole UN system ineffective and impotent. It says in Article 97: "The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council". And it is plain that the appointment of Troika would have required an amendment of the UN Charter, for Article 97 also specifies a single Secretary-General.²³ "He is the chief administrative officer of the organization".

Jawaharlal Nehru supported the necessity of executive leadership rather than committee rule, stating that "it would not be desirable for the executive to be weakened when frequent and rapid decisions had to be made. That would mean an abdication of the responsibilities undertaken by the United Nations. If the executive itself were split up and putted in different directions²⁴ it would not be able to function adequately or with speed".

Dag Hammarskjöld had staked his position upon the support of the so-called middle and small members of the United Nations. On October 4, 1960, he said: "It is not the Soviet Union or, indeed, any other big powers which need the United Nations for their protection. It is all the others. In this sense, the organization

22. U Thant, n. 19, p. 4.

23. Ibid., pp. 4-5.

24. R.I. Miller, n. 11, p. 335.

is first of all their organization, and I deeply believe in the wisdom with which they will be able to use and guide it. I shall remain in my post during the term of office as a servant of the organization in the interest of all those other nations as long as they wish me to do so.²⁵

By resigning, I would, therefore, at the present difficult and dangerous juncture throw the organization to the winds. I have no right to do so because I have a responsibility to all those state members for which overrides all other considerations ... In this context, the representative of the Soviet Union spoke of courage. It is very easy to resign; it is not easy to stay on. It is very easy to bow to the wishes of the big power. It is another matter to resist. As is well known to all members of this Assembly I have done so before on many occasions and in many directions. If it is the wish of those nations who see in the organization their best protection in the present world, I shall now do so again²⁶. However, he wished UN survival for peace and stability.²⁷

When Hammarskjöld, while en route to a crucial meeting concerning Congo, died in a plane crash on September 17, 1961, the Soviet Union could have proposed that a three-man organ be created, and it could have threatened to veto in the Security Council any attempt to appoint a single successor. But the Soviet Union was

25. Ibid., p. 327.

26. M.C. Setalvad, The UN in the Maintenance of World Peace (New York: Asia Publishing House, 1967), pp. 58-59.

27. R.I. Miller, n. 11, p. 339.

prepared to agree to the appointment of U Thant presumably with the knowledge that the 'Troika' idea would have received no more than a dozen or so votes in the General Assembly.²⁸

However, an agreement was finally reached between the United States and the USSR after extended private discussions on a formula under which the Security Council would recommend the appointment of U Thant as Acting Secretary-General for the remainder of Hammarskjold's term. On November 3, 1961, the Security Council unanimously recommended the appointment, which the General Assembly unanimously voted on the afternoon of the same day. U Thant accepted his appointment on the condition that the integrity of his office under the UN Charter would be fully respected.²⁹

Now, the choice of Hammarskjold's successor occupied the minds of all the delegations. Three persons - Ambassador Salim of Tunisia, Ambassador Frederick H. Boland of Ireland and Ambassador Ralph Enckell of Finland were mentioned as possible candidates. The New York Herald Tribune of September 20, 1961, came out with a story that U Thant has emerged as the leading candidate, enjoying the support of Asians and Africans and many other smaller countries and who, at the same time, had not been involved in Hammarskjold's Secretariat. The report might have been based on a story published in the London Observer on September 3, 1961, describing him as "a

28. R.A. Falk and S.H. Mendlovitz, The Strategy of World Order (New York: World Law Fund, Vol. 3, 1966), p. 344.

29. L.M. Goodrich, L. Hambro and B. Simons, n. 3, p. 87

Crippsian-like Socialist and a topically cool civil servant, a charmer, a man of infinite discretion, and the embodiment of non-alignment. The report went on to say that "with Mr. Khrushchev holding his view that only God is 'neutral, it will be interesting to see what line he taken if U Thant should one day emerge as the choic of non-aligned for the Secretary-General's job." U Thant asserts that the news was a surprise to him - and he believed to the surprise of everybody else. He made it clear to all those who contacted him that he was not interested in the post. But the story had its effect. On September 19, 1961, before the opening of the General Assembly, the then Foreign Minister, Andrei Gromyko of the Soviet Union, had sent one of his senior advisers, Alexei Nesterenko (who later became an undersecretary at the United Nations) to U Thant's office to explain the policy of the Soviet Government regarding the appointment of a new Secretary-General. His government, he said, would still insist on 'Troika', but as an interim measure it would like to have an interim Secretary-General and three Under-Secretaries acting collectively at the second level. The Soviet Union would oppose any one nominee, without agreement on three Under Secretaries who would act as a team, irrespective of nationality or political affiliation. He told him that if his (U Thant) name was proposed by some Government or Governments, without naming the three deputies and defining their functions, the Soviet Union's opposition should not be misunderstood. In reply, U Thant informed him that his Government was opposed to the concept of 'Troika' at any level and he assured him that at any rate, he was not at all interested in the post.

It was a day of extraordinary activity. In the evening, several delegations met and considered a draft resolution to be tabled before the General Assembly. The text was as follows:

"Considering that it is urgently important to provide due direction to the operation of the Secretariat pending the resolution of problems created by the death of Dag Hammarskjöld.

Appoints (Mr. X) to supervise for the time³¹ being the direction of the Secretariat".

Ambassador Stevenson told U Thant that the United States would not favour such a resolution since the functions of the appointee were not specified. He told him that the United States strongly maintained its position that the Secretary-General must function independently and without restraint, as envisaged in the Charter. Ambassador Zorin said that he had no immediate reaction³² to the draft resolution.

The Burmese Government was opposed to U Thant accepting any interim appointment. It wished to see that U Thant be appointed on a permanent and regular basis. The Burmese Prime Minister U Nu was opposed to the interim appointment for the following two reasons:

31. Ibid., p. 8.

32. Ibid.

First, it would be illegal; and secondly, U Thant's position would be undermined from the beginning owing to non-cooperation from the Soviet Government. Burmese Government and U Thant, both took firm stand and U Thant refused to accept an interim appointment.³³ Meanwhile, however, the Soviet Union had proposed a new interim formula whereby a four-man team would be appointed, each representing the East, the West, Asia and Africa. Gromyko stressed that those representing Asia and Africa must be non-aligned, and one of them was "to preside over the team of four". The Soviet Union did not mention veto power, but stressed that all the four should work "as a team and with mutual understanding". But the formula was unacceptable to the Big Four. They opposed it strongly.³⁴

To break the deadlock, however, Burma was prepared to go along with a formula whereby three or more deputies were to be appointed to assist the Secretary-General, provided;

- "1. That there is no question of the exercise by them of veto powers;
2. It is clearly understood that the deputies are not bloc representatives but representatives of their respective countries or possibly of geographical regions;
3. That such a formula is accepted by both East and West".³⁵

33. Ibid., pp. 8-9.

34. Ibid., pp. 9-10.

35. Ibid., p. 12.

Meanwhile, the United States and the Soviet Union had been trying to work out their differences over the number of advisers the new Secretary-General was to have. On October 9, 1961, the USSR agreed to five advisers (the number proposed by the United States) but now the two powers disagreed on the region the fifth adviser was to represent. The United States wanted Western Europe, while the USSR wanted Eastern Europe. The efforts continued and "the numbers game" persisted. No agreement was insight. On October 13, 1961, the Soviet position softened once again. However, on October 14, 1961, Ambassador Stevenson announced on a television interview: "U Thant is acceptable to the Soviet Union and highly acceptable³⁶ to the United States". He went on to say, however, that the Big Powers still had to agree on the number of principal advisers, their functions and the procedures to be adopted both in the Security Council and the General Assembly.³⁷

On the afternoon of October 17, 1961, Ambassador Stevenson told U Thant that "the numbers game" was still unresolved, and in view of the very serious deterioration of the Congo situation, his government felt the extreme urgency of appointing an interim Secretary-General. He said that he would talk very seriously both with the Soviet delegation and Western Europeans. Earlier that day West Germany had declared that it would reject any arrangement if Western Europe was excluded from the list of advisers. On the

36. Ibid., pp. 14-15.

37. Ibid., p. 15.

same day, the French Ambassador told U Thant that the Western European statement was based on rumors to the effect that the United States was contemplating four principal advisers without Western European representation, and for the first time, he confided to him that his government would not oppose his appointment.

France was so opposed to the appointment of U Thant that a French diplomat was reported to have told a correspondent that U Thant was "a short man" and did not even speak French". U Thant had reacted, as he himself puts it, "I was taller than Napoleon,³⁸ and that he did not even speak English".

But the Big Two continued to differ. The "numbers game", it seemed would wreck the United Nations. Realizing the gravity of the situation, U Thant informed the Big Two on October 19, 1961, that he intended to propose his own formula on a "take it or leave it basis". This seemed to have some effect. The deadlock began to break. The United States and the United Kingdom issued statements on November 1, 1961, that they would like to leave the question of advisers to be decided by U Thant himself. France followed suit. The Soviet Ambassador issued an identical statement on November 2, 1961. U Thant was given a free hand to come out with his formula, both in regard to the number of advisers and the nature of consultation with them. The Security Council unanimously recommended his name as Acting Secretary-General on November 3, 1961, and the same

38. Ibid.

day, the General Assembly appointed him to serve "the unexpired term" of Dag Hammarskjöld (until April, 1963). Later, U Thant³⁹ was appointed as Secretary-General and served the United Nations from 1961 to 1971. He refused to be considered for a third term and, consequently, it became necessary in 1971 to choose his⁴⁰ successor.

The first meeting of the Security Council held on December 7, 1971, in search of U Thant's successor, proved abortive as the Big Powers vetoed each others candidate. The Security Council again met on December 17, 1971. Out of seven names proposed at the meeting for the post of Secretary-General, Kurt Waldheim got ten affirmative votes (the necessary minimum vote is nine) but his nomination was vetoed by China and the United Kingdom. At the third meeting of the Council, held on December 20, 1971, ten names were proposed, only three received required votes but all three were vetoed. The Council once again met the next day and this time Kurt Waldheim emerged as a successful candidate. His name was recommended to the General Assembly which appointed him unanimously as Secretary-General on December 22, 1971.⁴¹

Kurt Waldheim's second term was due to expire in December, 1981,⁴² but he was unprecedentedly seeking a third term.

39. Ibid., pp. 12-18.

40. L.M. Goodrich, n. 4, p. 88.

41. Ishtiaq Ahmad, 'Appointing the UN Secretary-General: The Politics on and Behind the Scene', Indian Journal of Politics, Vol. XV, Nos. 1 & 2, 1981, p. 192.

42. The Times of India (New Delhi), July 10, 1981.

CHAPTER II

SECRETARY-GENERAL AS AN ADMINISTRATOR

Waldheim's main contender was Tanzania's Foreign Minister, Salim Ahmad Salim and his name was endorsed by the Organization of African Unity. However, Kurt Waldheim's name was vetoed by China and Salim's name was vetoed by the United States. However, Javier Perez de Cuellar, the present incumbent, was accepted by all the Big Five. He was appointed as the fifth Secretary-General on January 1, 1982.

43. Ishtiaq Ahmad, n. 41, p. 192.

CHAPTER II

SECRETARY-GENERAL AS AN ADMINISTRATOR

Under the Charter, the Secretary-General is the chief administrative officer of the United Nations. In that capacity, he is responsible for securing the highest standards of efficiency, competence and integrity throughout the Secretariat. He should be regarded as the head of a staff of international civil servants, who are not to be influenced in the performance of their duties by national, ideological, or personal consideration of any kind. "Once a member of the Secretariat is influenced in any way by any authority external to the organization, he ceases to be a truly international civil servant".

The Charter, as we have seen, makes the Secretary-General the chief administrative officer of the organization. His administrative functions make him the channel of communication between the members and the organs of the United Nations. He must supervise the preparation of work for the different organs and execute decisions as directed by them. He is also responsible for coordinating the widespread activities of the United Nations. No other official is in the same position as the Secretary-General as far as over-all integration is concerned. This is particularly true with respect to bringing the Specialized Agencies into

1. U Thant, View from the UN (London: David and Charles Newton Albot, 1978), p. 29.

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relationship with the United Nations.

However, Article 97 of the UN Charter refers to the Secretary-General as the "chief administrative officer of the Organization", and, in this capacity, he carries out the functions of a civil servant. Although the work itself is carried out by staff of the Secretariat, it is the Secretary-General, who is responsible for the organization of meetings of the UN bodies, the circulation of reports and the general preparation that makes³ for the smooth running of the UN machine.

However, Article 98 requires that the "Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization".⁴ This Article was approved at San Francisco without discussion or dissent.

Article 98 of the Charter provides the framework for the Secretary-General's duties in connection with serving as the communication link of the Organization and in respect of preparation

2. S.S. Goodspeed, The Nature and Function of International Organization (New York: Oxford University Press, 1959), p. 346.

3. D.W. Greig, International Law (London: Butterworths, 1970), p. 385.

4. Everyman's United Nations (New York: United Nations Office of Public Information, Sixth edition, 1959), p. 557.

of work and execution of decisions for the various organs. Except in the case of the Security Council, he calls special sessions on the request of the appropriate authority, makes routine notifications to members, processes credentials of delegates, keeps records of all meetings, provides and directs the staff for organs, commissions, and special bodies, publishes treaties and performs a number of routine duties called for in the Charter. The Secretary-General, in addition, has such discretionary and political responsibilities as drawing up the provisional agenda for the General Assembly, the Security Council, and Trusteeship Council and proposing items for inclusion on the agenda for each of these bodies. He is also required to make an annual report to the General Assembly⁵ on the work of the Organization.

However, as the chief administrative officer of the United Nations, the Secretary-General has functions and powers which are of an essentially managerial nature. He has responsibility for seeing that necessary secretarial services are provided for the General Assembly, the Security Council, ECOSOC, the Trusteeship Council, and the large number of subsidiary organs and special bodies set up to do the work of the United Nations. In addition, he is responsible for directing and supervising a wide range of technical services, such as, the preparation of background papers, the preparation of reports and periodical publications, and a multitude of other special technical tasks, which the Secretariat

5. S.S. Goodspeed, n. 2, p. 347.

may be asked to perform by the General Assembly or the Security Council. Furthermore, he is responsible for personnel administration, including appointments, promotions and disciplinary action. He must oversee the administration of the finances of the Organization.⁶ However, financial functions involve the preparation of the United Nations budget, the allocation of all funds, the collection of all contributions from the members, and control over expenditures. The Secretary-General also maintains custody of all the funds. Consequently, the fiscal officers of the Secretariat draw up the budget and the Secretary-General presents it to the Assembly as a part of his annual financial report.⁷

The Secretary-General presents the annual report of the United Nations, covering the views of the Secretary-General on achievements of the past year, the state of international affairs and how the Organization and its members can do better to promote its purposes.

The General Assembly Rules of procedure provide that the Secretary-General shall not only make an annual report but also "such supplementary reports as are required" (Rule 38). He is required to communicate the annual report to the members at least forty-five days before the opening of the regular session. The introduction may be, and usually is submitted later. The provisional

6. L.M. Goodrich, The United Nations in a Changing World (New York: Columbia University Press, 1974), p. 89.

7. S.S. Goodspeed, n. 2, p. 347.

agenda of the General Assembly must include the report of the Secretary-General. The report has not been made the subject of discussion in the general debates at the beginning of each session of the General Assembly, as was the practice of the League of Nations, and no resolutions have been adopted concerning it.⁸

Furthermore, the Secretary-General is responsible for the organization and administration of the Secretariat. However, his choice of staff - more particularly of higher staff - and his leadership will largely determine the character and efficiency of the Secretariat as a whole. It is on him that will mainly fall the duty of creating and maintaining a team spirit in a body of officials recruited from many countries. As the official spokesman for the United Nations, the Secretary-General represents the organization in all its negotiations with the governments of members and nonmembers alike and with outside agencies. His press conferences, public addresses and press releases speak authoritatively for the United Nations.⁹

The Secretary-General is the chief administrator or manager of the United Nations. His strategic position at the intersection of the political and administrative sectors of the Organization provides him with opportunities for offering initiative and leadership in both sectors. He maintains contacts with governments and their representatives in the United Nations delegations. He personally

8. L.M. Goodrich, E. Hambro, A.P. Simons, Charter of the United Nations: Commentary and Documents (New York: Columbia University Press, 1969), p. 584.

9. S.S. Goodspeed, n. 2, pp. 347-48.

performs those administrative tasks in which he is most interested and which most enhance his position of leadership, and delegates to others the remainder. He appoints Secretariat personnel, within the constraints previously outlined, and is the primary source of plans for restructuring the administrative framework, a process fundamental to improvement of administrative effectiveness and efficiency. In carrying out his administrative functions, the Secretary-General must represent the epitome of discretion and neutrality among member states. At the same time he must uphold the principles and purposes of the Organization.

In attempting to unify the staff as an efficient administrative unit, the Secretary-General confronts a paradoxical set of factors, centrifugal forces (in addition to the representational basis for appointment of heads of major departments and offices, and short-term contacts for a minority of employees) include the compartmentalization of the Secretariat into its specific functions and activities.

Opposed to these centrifugal forces are the unifying factors available to the Secretary-General. Insofar as the staff council has been utilized to develop policy concerning staff welfare, an esprit de corps has been established for the entire Secretariat. The staff members are inclined to rally behind the maximalist philosophy of the Secretary-General because an expansion of executive power is shared by all members of the Secretariat. The career of International Civil Servants also develops in common with the Secretary-General, a devotion to the broad principles and purposes of the Organization, which binds them together in a sense of mission.

Finally, the Secretary-General must inspire his staff by his leadership and by seeking their support in their common efforts.

Article 63 of the Charter assigns to the Economic and Social Council the task of coordinating the activities of the Specialized Agencies and the United Nations in economic and social projects, but, of necessity, the Secretary-General is the chief coordinator. In its first year of operation, the Economic and Social Council authorized the Secretary-General to establish an Administrative Committee on Coordination composed of the administrative heads of the Specialized Agencies and to serve as its Chairman. Other efforts at coordination by the Secretary-General are carried out through the preparation of reports for the Economic and Social Council and through multiagency cooperative activities in such areas as technical assistance and economic development.¹⁰

The Secretary-General is more than the chief administrative officer of the United Nations. Under Article 99 of the Charter, he is also a high political officer. In that capacity, he may take the lead in dealing with matters that may threaten the maintenance of international peace and security. In this respect, the Secretary-General of the United Nations has far greater political powers¹¹ than his counterpart in the League of Nations had. According to Article 99, "The Secretary-General may bring^{to} the attention of the

10. A.L. Bennett, International Organization: Principles and Issues (New Jersey: Prentice-Hall, Inc., 1977), pp. 338-39.

11. U Thant, n. 1, p. 29.

Security Council any matter which in his opinion may threaten¹²
the maintenance of international peace and security".

This Article confers upon the Secretary-General of the United Nations world political responsibilities which no individual, no representative of a single nation, ever had before. Furthermore, from it derived further rights that were soon to be written into the Rules of Procedure of the Security Council, the General Assembly, the Economic and Social Council and the Trusteeship Council. The Secretary-General was to be empowered to propose items for the agenda of these organs and to take part in the debates, rights that otherwise were reserved to government, and to representatives of¹³
member states.

Consequently, the UN Charter extended the administrative functions of the Secretary-General to the political field, no doubt enabling him (in the spirit of the "Albert Thomas" precedent) to act over and above his functions as chief administrative officer. Moreover, we "shall perform such other functions as are entrusted¹⁴
to him" by the representative organs. In this way the Secretary-General may receive, in addition to his administrative powers, also political power. While these powers under Article 98 are delegated, he can act independently of any other organ under Article 99,

12. I. Brownlie, Basic Documents of International Law (Oxford: Clarendon Press, 1967), p. 28. See also Everyman's United Nations, n.4, p. 557.

13. Trygve Lie, In the Cause of Peace (New York: The Macmillan Company, 1954), pp. 39-40.

14. R.A. Falk and S.H. Mendlovitz, The United Nations (New York: World Law Fund, 1966), p. 307.

with authorises him to "bring tbe the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security". Thus, he may enter the scene as a spokesman of international interest and take action in the spirit of what has been tentatively called the 'Thomas Doctrine'.¹⁵

Thus, according to Article 99, the Secretary-General is given a double discretion. Before going to the Security Council, he has to decide whether in his opinion the matter could be eligible to be put on the agenda of the Security Council. Article 99 makes it clear that he may do so, but that there is no duty on him to go so far. At the San Francisco conference, the problem of the right or duty of the Secretary-General to act under Article 99 was ventilated,¹⁶ but the idea of imposing a duty on him was definitely abandoned.

The Preparatory Commission, referring to the Secretary General's right under Article 99 as "a quite special right which goes beyond any power previously accorded to the head of an international organization" concluded that it was "impossible to foresee how this article will be applied, but the responsibility it confers upon the Secretary-General will require the exercise of the highest qualities of political judgement, tact and integrity."¹⁷

15. Ibid.

16. Ibid., p. 310.

17. L.M. Goodrich, E. Hambro and A.D. Simons, n. 8, p. 598.

It is the Secretary-General's broader political powers which provide the contrast between the role of the United Nations Secretary-General and that of the League of Nations Secretary-General. That the Secretary-General should have an important political role was clearly desired by those who wrote the UN Charter, but what was not and could not be anticipated was the exact form that role would assume. A number of factors have contributed to its definition in practice:

1. The Secretary-General's position as the permanent, top-ranking, full-time official able to speak for the organization as a whole;
2. the advantages he enjoys in his relations with the political organs as the result of the expertise and detailed knowledge that he commands;
3. the limitations imposed on the Security Council by the difficulty its permanent members have in reaching detailed agreements;
4. the inherent inability of the Assembly to perform executive function;
5. the degree of confidence that occupants of the office have inspired in the manner in which they have discharged responsibilities placed upon them; and
6. the willingness of member governments to entrust important functions to the United Nations and its organ.

The Secretary-General is able to exercise important political functions in a number of ways:

1. as the official representative of the United Nations;
2. as the official vested with specific responsibilities under resolutions of the General Assembly and the Councils;
3. as the possessor of a special right under Article 99; and
4. as the head of one of the principal organs responsible for
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purposes and principles of the Charter.

In his political functions, the Secretary-General may exercise considerable influence on general policy as well as the position of individual members. In his relationship with the organs of the United Nations, there are several instances in which he may directly or indirectly bring influence to bear on decisions. Examples of this are his drawing up of provisional agenda for each of the political organs and the placing of items on the agenda of the General Assembly and the Trusteeship Council. In addition, he may make oral or written statements to the Security Council, the General Assembly, the Trusteeship Council, and ECOSOC on any matter which has related to a question before it. He cannot make a statement to ECOSOC or the Trusteeship Council unless so invited by the appropriate presiding officer but such an invitation is not necessary with respect

18. L.M. Goodrich, The United Nations in a Changing World, n. 6, pp. 89-90.

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to the Assembly and the Security Council.

The Secretary-General represents the Organization in its relation with member governments and its external relations generally. In his relations with member governments he serves as a useful source of information, an advisor, and a stimulator of policies and action in support of United Nations purposes and principles. He makes contacts with governments both by visits to member capitals and by receiving member officials at headquarters, but even more important, in contrast to the League practice, are the opportunities provided at the headquarters for easy and continuing contacts with the permanent representatives of member governments. In addition, formal agreements with governments and other organizations are concluded by the Secretary-General, although as a rule they require the approval of the General Assembly.²⁰

By reading his constitutional trust into Articles 97, 98 and 99, the Secretary-General can, subject to the limitation of power politics, help to cement their presumed cooperation. Even if measures taken by him are not prima facie related to international law, they are bound to have an impact on the development of new standards of international behaviour.²¹

The Charter reserved for the Secretary-General power of appointment to all posts in the Secretariat and in Article 100,

19. S.S. Goodspeed, n. 2, p. 348.

20. L.M. Goodrich, n.6, pp. 90-91.

21. R.A. Falk and S.H. Mendlovitz, n. 14, p. 323.

spelled out in the following unequivocal terms the exclusively international responsibilities of this civil service for the world organization;

"1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them²² in the discharge of their responsibilities."

The Article 100 reflects the standards the first Secretary-General of the League sought to apply and which were accepted by the majority of the members, though the Covenant contained no express provisions to this effect.

The Preparatory Commission observed that "(if) it is to enjoy the confidence of all members of the United Nations, the Secretariat²³ must be truly international in character. After quoting the provisions of Article 100, the Commission continued: "Such a Secretariat cannot be composed, even in part, of national representatives responsible to Governments, the Secretary-General and the

22. Everyman's United Nations (1959), n. 4, pp.557-58; See also Trygve Lie, n. 13, p. 40.

23. L.M. Goodrich, E. Hambro and A.P. Simons, n. 8, p. 594.

staff will not be the servants of the state of which they are nationals, but the servant only of the United Nations...".²⁴

However, the fact that the Secretary-General is an official with political power as well as administrative functions had direct implications for the method of selection. Consequently, the drafters of the Charter laid emphasis on the personal responsibility of the Secretary-General. It is he who is solely responsible for the performing the functions entrusted to him for the appointment of all members of the Secretariat and for assuring the organ that the Secretariat will carry out their tasks under his exclusive authority. The idea of "Cabinet system" in which responsibility for administration and political functions would be distributed among several individuals was squarely rejected.²⁵

Furthermore, the Charter in Article 101, also establishes the principle that "The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible".²⁶

24. Ibid.

25. M. Waters, International Organization (New York: The Macmillan Company; London: Collier Macmillan Ltd., 1967), pp. 181-82.

26. Everyman's United Nations (1959), n. 4, p. 558; See also S.S. Goodspeed, n. 2, p. 361.

To sum up, the Charter laid down these essential legal principles for an International Civil Services. It was to be an international body, recruited primarily for efficiency, competence and integrity, but on as wide geographical basis as possible, it was to be headed by a Secretary-General who carried constitutionally the responsibility to other principal organs for the Secretariat work. And finally, Article 98 entitled the General Assembly and the Security Council to entrust the Secretary-General with tasks going beyond the verba formalia of Article 97 - with its emphasis on the administrative function - thus, opening the door to a measure of political responsibility which is distinct from the authority explicitly accorded to the Secretary-General under Article 99 but in keeping with the spirit of that Article.

This last mentioned development concerning the Secretary-General, with its obvious consequences for the Secretariat as such, takes us beyond the concept of a non-political civil service into an area where the official, in the exercise of his functions, may be forced to take stands of a politically controversial nature. It does this, however, on an international basis and, thus, without departing from the basic concept of "neutrality". In fact, Article 98 as well as Article 99 would be unthinkable without the complement of Article 100 strictly observed both in letter and spirit.²⁷

However, under the revised Regulation, the Secretary-General may terminate a permanent appointment "if such action would be in

27. M. Waters, n. 25, p. 182.

the interest of the good administration of the Organization and in accordance with the standards of the UN Charter, provided that²⁸ the action is not contested by the staff member concerned". The Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory. He may "summarily dismiss" a member for serious misconduct (Regulation 10). Disciplinary measures consist of written censure, suspension without pay, demotion, and summary dismissal. The Administrative Tribunal has defined conduct punishable under staff regulation 10 to be "either misconduct committed in the exercise of a staff member's professional duties or acts committed outside his professional activities but prohibited²⁹ by provisions creating general obligations for staff members".

Some people may say that the Secretary-General, who more than anyone else symbolizes the Organization as a whole, must be an outspoken public servant endeavouring to express the views of all peoples. He should not merely service United Nations' meetings; he should seek to influence the course of debates. The Secretary-General of the League of Nations, this school of thought holds, were far too retiring. The Covenant of the League gave them little basis for political activity, and they did not develop adequately what basis there was. In contrast, the Secretary-General of the United Nations should emerge as a bold leader of international thought and action, as a genuinely international figure stimulating

28. L.M. Goodrich, E. Hambro and A.P. Simons, n. 8, p. 608.

29. Ibid.

the Member states to rise above their nationalistic disposition. The nation delegations (the arguments run) tend to look at problems from their national points of view - they are traditionally bound to see the international interest in terms of their national interests, but a solution to a problem which is truly in the international interest is more than the sum of the national positions which the delegations advance, and the Secretary-General is uniquely placed to perceive this higher international solution and propound it if he so wishes.³⁰

The role which the framers of the Charter of the United Nations envisaged for the Secretary-General fell between the two extremes. The Secretary-General unquestionably would be under an obligation to pay a great political par^t; but Trygve Lie said, "that he felt, there were limits to the extent of his initiative - the limits imposed by the realities of national and international political life".³¹ The Secretary-General might be the symbol of the Organization as a whole - the symbol, in other words, of the international spirit. This, and his strategic situation at the very centre of international affairs as confident of the world's statesmen and as spokesman to the world's peoples, attached significant influence to his position; but it was a moral power, not a physical one, and the moral power, in this world, is not conclusive. The Secretary-General, it was said, should be more the general than the Secretary - but where were his division? In the words of Trygve Lie, "Thus, I inclined,

30. Trygve Lie, n. 13, p. 41.

31. Ibid., p. 42.

from the beginning, toward a middle way - a pragmatic and open minded approach. I would listen to all my advisers and be directed by none. I had no calculated plan for developing the political powers of the office of Secretary-General, but I was determined that the Secretary-General should be a force for peace. How that force would be applied I would find out - in the light of developments.³²

While Trygve Lie conceived the office of the Secretary-General in a statesmanlike way, Hammarskjöld must be considered the originator and formulator of a sui generis UN multilateral diplomacy. It is his merit to have combined public with private (traditional) diplomacy within the framework of the United Nations on an unprecedented scale.³³ But it would be difficult to define the diplomatic activities of the Secretary-General with absolute precision. The proportional measure of his dependence or independence of action could perhaps best be assessed by a joint reading of Articles 97, 98, 99 and 33 of the Charter. Article 97 provides him with administrative machinery which enables him to carry out executive functions in the internal or external spheres. On the other hand, Article 98 makes him the bearer of powers which he could not assume without delegation. Finally, the joint application of Articles 33 and 99³⁴ enables him to take diplomatic initiatives.

32. Ibid.

33. R.A. Falk and S.H. Mendlovitz, n. 14, p. 312.

34. Ibid., p. 315.

No doubt, there is some force in the argument that legal position of the Secretary-General is "mutatis mutandis" analogous to that of the bearer of presidential powers. There are, however, essential differences between the two which are connected with the election (appointment) of the Secretary-General by, and his dependence on, the representative organs of the United Nations. The Secretary-General has no direct appeal to the electorate (i.e. to member states) and his international responsibility to the Organization as stipulated in Article 100 does not allow him to rise, with the help of independent constitutional powers, above the representative organs. However, there is no doctrine of "parliamentary" supremacy inscribed in the UN Charter which would reserve to anyone of the principal organs a paramount position. The Secretary-General is one of the principal organs and, in the light of the administrative as well as the political theory, there is room for assuming that he bears an independent co-responsibility (with other organs) for the management of UN affairs. Moreover, as a permanent and exclusively internationally responsible civil servant, the Secretary-General may be presumed to be the "Constitutional Guardian" of the principles of the UN Charter. The rise of the Secretary-General to the level of an international spokesman makes him, at the same time, the guardian of the ³⁵ "Pacta Sunt Servanda" principle in relation to the UN Charter.

35. Ibid., pp. 321-23.

CHAPTER III

SECRETARY-GENERAL AS A PEACE-MAKER

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Twice in the twentieth century, the scourge of war brought¹ untold sorrow to mankind and after both the wars mankind pledged to establish conditions which would ensure a better world order - a world in which violence could be reduced significantly, peace and security could be ensured; and conditions for economic welfare, social justice and respect for human rights and fundamental freedoms could be created. Thus, the League of Nations came into existence after the First World War, but, unfortunately, it failed and then² came the United Nations - a revised version of the League. Undoubtedly improved in many respect and representing a fresh approach to the world problems with the purpose to "maintain international peace and security; to develop friendly relations among nations; and to cooperate internationally in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and fundamental³ freedom for all.

However, the primary responsibility for maintaining international peace and security is given to the Security Council, but

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1. I. Brownlie (ed.), Basic Documents of International Law (Oxford: Clarendon Press, 1967), p. 2.
 2. Inis L. Claude, Jr., Swords into Plowshare: The Problems and Progress of International Organization (New York: Random House, 1963), p. 66.
 3. I. Brownlie, n. 1, p. 3.

there are a number of cases where states have directed their notification of a dispute or other situation not direct to the Council, but to the Secretary-General; thus, giving him a choice of action it would then be for the Secretary-General to bring the matter to the attention of the Council if he thought fit (acting ⁴ under Article 99 of the UN Charter).

According to Article 99, "The Secretary-General⁵ may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security. The Secretary-General is, therefore, equal in this respect to any government of the United Nations or to the General Assembly as a whole. Consequently, the Secretary-General becomes the custodian of international peace and security. Whenever, or wherever, political, economic or territorial difficulties appear which may threaten world peace, it is his right and duty to put the UN machinery in motion. There is as yet no precise interpretation of these powers of the Secretary-General. In the concept of the Charter, he is meant to be not only an element of vigilance but also one of inspiration to the United Nations as a whole. That is why he also has the right to put on the agenda of the Assembly any item he may consider to be important and to fall within the scope of the ⁶ United Nations.

4. D.W. Greig, International Law (London: Butterworth, 1977), p.559.

5. I. Brownlie, n. 1, p. 25.

6. Louis David, The United Nations (London: Phoenix House, 1946), p. 82.

The Secretary-General, under Article 99 of the Charter, is empowered to bring to the attention of the Security Council any matter which in his opinion may threaten world peace. He is, in a sense, to act as the eyes and ears of the organization and its members. If a threatening situation arises and no member state brings the matter to the attention of the Security Council, the Security Council, on the insistence of the Secretary-General, may consider the matter. He, thus, needs to be fully informed about difficulties before they actually arise, so that he will be in a position to decide whether to exercise his formal rights under Article 99 would be worthwhile. Hammarskjöld explicitly invoked this concept of Article 99 to justify his visit to Tunisia in 1961: "It is obvious that the duties following from this Article cannot be fulfilled unless the Secretary-General, in case of need, is in a position to form a personal opinion about the relevant facts of the situation which may represent such a threat (to international peace and security)".

It was presumably this Article, which provided the legal basis for the authority granted to the Secretary-General in connection with the UN Emergency Force in the Middle East. The crucial role now played by the Secretariat, and, in particular, by the Secretary-General, arises from weaknesses in the functioning of the United Nations. The founders intended that the Security Council should have primary responsibility for maintaining world peace. The Council was to have at its disposal an international military force to give effect to its decisions. The great powers were to

have permanent membership of the Council, with right to veto most substantive decisions.

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However, the preparatory Commission of the United Nations in its report submitted in 1945 elaborated on Article 99 as follows: "The Secretary-General may have an important role to play as a mediator and as an informal advisor of many Governments, and ~~a~~Will undoubtedly be called upon from time to time, in the exercise of his administrative duties to take decisions which may justly be called political. Under Article 99 of the Charter, moreover, he has been given quite special rights which go beyond any power previously accorded to the head of an international organization, viz., to bring to the attention of the Security Council any matter (not merely any dispute or situation) which in his opinion may threaten the maintenance of international peace and security. It is impossible to foresee how this Article will be applied; but the responsibility it confers upon the Secretary-General will require the exercise of the highest qualities of political judgement, tact and integrity".

This, in fact, is the only official guidance available to the Secretary-General on the implications of Article 99, which, according to records, was adopted with very little debates in San Francisco. The right to bring matters to the attention of the Security Council implies that the Secretary-General can use his

7. Evan Luard, The Evolution of International Organization (New York, Washington: Frederick A. Praeger Publishers, 1967), pp. 94-95.

own discretion, without the guidance or authorization of the Security Council or the General Assembly, to conduct inquiries or to engage in diplomatic activity in regard to matters relating to the maintenance of international peace and security. In this connection, Article 33 of the Charter is also relevant. It says: "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice".

When these two Articles are taken together, the Secretary-General enjoys special powers of political or diplomatic initiative that no Secretary-General of the League of Nations enjoyed. In matters relating to international peace and security, however, two simple considerations are inescapable. First, the Secretary-General must always be prepared to take an initiative, no matter what the consequences to his office or to him personally may be, if he sincerely believes that it might mean the difference between peace and war. In such a situation, the personal prestige of a Secretary-General - and even the position of his office - must be considered to be expendable. The second cardinal consideration must be the

8. U Thant, View from the UN (London: David and Charles Newton Abbot, 1967), p. 30.

9. I. Brownlie, n. 1, p. 12.

10. U Thant, n. 8, p. 30.

maintenance of the Secretary-General's independent position, as set out in Article 100 of the Charter, which alone can give him the freedom to act, without fear or favour, in the interest of world peace. Such independence does not imply any disrespect for the wishes or opinions of member governments. On the contrary, his independence is an insurance with his oath of office, the long-term¹¹ interest in peace of all members of the Organization.

Moreover, Article 99, in its precise and full meaning, was never explicitly invoked by a Secretary-General until the Congo crisis of 1960 (though Trygve Lie invoked in the Korean crisis of 1950 and Hammarskjöld announced that he would have used it in the Suez crisis of 1956, had the USA not taken the necessary initiative). What, however, has repeatedly happened – so characteristic of the UN's treatment of its Charter – is that it has been interpreted as providing the Secretary-General with a reservoir of political authority on which he can draw or not as his judgement, courage and patience may suggest. Over the years a body of precedents, some good, some not so good, have been accumulated to guide the Secretary-General¹² in the use of his power.

However, Article 99 was relied on by Trygve Lie in an informal way in the Iranian or Greek Questions in 1946, the Berlin Blockade in 1944-48, the Communist Coup in Czechoslovakia, and later in the

11. Ibid., p. 33.

12. H.G. Nicholas, The United Nations as a Political Institution (New York, London: Oxford University Press, 1971), p. 171.

matter of the Statute of Treaties in 1948, and also on the question of the partition of Palestine in 1948 and of the representation of China in the United Nations in 1950, in which the Secretary-General advocated the admission of the Peking Government to the United Nations. In a number of cases, the Secretary General's intervention took the form of submission of legal memoranda and towards the end of his term of office, Trygve Lie led before the General Assembly.¹³

However, in 1950, Trygve Lie presented "a memorandum of Points for Consideration in the Development of a Twenty Year Programme for Achieving Peace through the United Nations".¹⁴ The memorandum consisted of a 'Preamble' and 'Ten Points', are as follows:-

1. Inauguration of periodic meetings of Security Council attended by foreign ministers or other members of governments;
2. new effort to control atomic energy;
3. new approach to armaments control, both nuclear and conventional;
4. Serious efforts to reach agreement on armed forces to be made available under Charter;
5. proceed toward universal membership;
6. a sound and serious programme of technical assistance and broad scale capital investment;

13. R.A. Falk and C.H. Mendlovitz, The United Nations, Vol. 3 (New York; World Law Fund, 1966), p. 312.

14. Trygve Lie, In the Cause of Peace (New York; The Macmillan Company, 1956), p. 277.

7. more active role by specialized agencies;
8. wider observance and respect for human rights;
9. use of the United Nations to promote peaceful change; and
10. use of United Nations machinery to speed up the development
15
of International Law.

Lie suggested that "what we need, what the world needs", he said that he used the phrase because he wished "to let everybody know that the question of peace in the world is a question which
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cannot be settled immediately but which will take time".

About the twenty-year programme for peace, Trygve Lie said that as a Secretary-General, it is my firm belief that a new and great effort must be attempted to end the so-called "cold war" and to set the world once more on a road that will offer greater hope of
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lasting peace.

In the memorandum, he sought to differentiate between representation in the United Nations and the question of diplomatic recognition by the member states. He argued with force that representation did not involve recognition, that China was a permanent member of the Security Council irrespective of the nature of his government.

15. Ibid., pp. 278-82.

16. R.I. Miller, Dag Hammarskjold and Crisis Diplomacy (New York: Oceana Publications, Inc., 1961), pp. 4-5.

17. Trygve Lie, n. 14, p. 278.

In his view, it should be the task of the Security Council to determine which of the two Chinese governments - Communist or Nationalist - actually represented the Chinese people and, hence, would be entitled to membership. However, any success which Lie gained by these arguments in foreign capitals was ended by the¹⁸ North Korean aggression in June, 1950.

Trygve Lie stated before the General Assembly on September 23, 1950, that he employed Article 99 'for the first time' before the Security Council on June 25, 1950, in regard to the aggression of North Korea. But it is not true; he had taken the initiative within¹⁹ the spirit of that Article on many occasions.

On June 25, 1950, the Secretary-General received an urgent call from Washington that the North Korean forces had attacked²⁰ South Korea in forces. After condemning the North Korean attack, the Secretary-General stated that 'the present situation is a serious one and is a threat to international peace. The Security Council is, in my opinion, the competent organ to deal with it. I consider it the clear duty of the Security Council to take steps necessary to reestablish peace in that area'.

However, the Security Council was presented with a unique opportunity to take action in a situation involving the conflicting

18. S.S. Goodspeed, The Nature and Function of International Organization (New York: Oxford University Press, 1959), p. 352.

19. Ibid., p. 356.

20. R.I. Miller, n. 16, p. 10.

vital interest of permanent members. A unified command under the UN flag with General Mac Arthur of the US Supreme Commander was²¹ sent to assist the South Korea against the North Korea. It may be pointed out that the "creation of the unified command in Korea by the Security Council was possible solely because of the fortuitous²² absence of the Soviet representative. Hence, it was realised by the General Assembly that to prevent matters relating to peace²³ and security from being "frozen" on the Security Council agenda which reduced to "impotence" the Organization as a whole. It should assume the responsibility of the Council. Consequently, the General Assembly adopted the closely connected resolutions, the first of²⁴ which is usually termed the 'Uniting For Peace Resolution'. Its intention was to create a nucleus of collective security outside²⁵ the Security Council. It provides, "If the Security Council because of the lack of the unanimity of its permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of peace or act of aggression, the General Assembly will consider the matter immediately with a view to making appropriate recommendations to members for collective

21. A.L. Bennet, International Organization (New Jersey: Prentice-Hall, Inc., Englewood Cliffs, 1977), p. 139.

22. D.W. Greig, n. 4, p. 577.

23. J.C. Starke, Introduction to International Law (London: Butterworths, 1972), p. 603.

24. D.W. Greig, n. 4, p. 577.

25. Paul Reuter, International Institutions (London: George Allen and Unwin Ltd., 1958), pp. 276-77.

measures, including the case of breach of peace or act of aggression, the use of armed forces when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in an emergency special session²⁶ within twenty-four hours of the request therefor ...".

However, Andrei G. Vyshinsky vehemently criticized all the three resolutions. Vyshinsky said that the Secretary-General then "would be the Commander-in-Chief of the armed forces of the General Assembly ... riding on a white horse ..."²⁷ and definitely the resolutions strengthened the position of the Secretary-General in the maintenance of peace and security.

This transfer-device greatly enlarged the functions and competence of the General Assembly. It is the important shift of emergency power from the veto-ridden Security Council to the veto-less General Assembly.²⁸

However, Lie's dynamic leadership and his support for military measures in the Korean crisis had evoked his position and the Soviet Union totally boycotted him throughout the remainder of his tenure in office. Furthermore, the "uniting for peace resolution" provides the Secretary-General with ad hoc powers. The resolution

26. R.A. Falk and S.H. Mendlovitz (eds.), n. 13, p. 251; see also L.M. Goodrich, E. Hambro and A.P. Simons, Charters of the United Nations (New York, London: Columbia University Press, 1959), p. 213.

27. Trygve Lie, n. 14, p. 374.

28. Ibid., p. 347.

established a collective measures committee and directed it 'in consultation with the Secretary-General and with such member states as the committee finds appropriate, to study and make a report to the Security Council and the General Assembly ... on methods ... which might be used to maintain and strengthen international peace and security'. The Secretary-General was also requested, with the approval of the collective measures committee to appoint a panel of military experts who could be made available, on request, to member states wishing to obtain technical advice regarding the organization, training and equipment for prompt service as United Nations units of the elements referred to'.²⁹

The following discussion is the 'illustration of the use of such ad hoc powers by the Secretary-General:

Dag Hammarskjold was a most willing representative of the General Assembly and of the Security Council in carrying out task ensured to him.³⁰ Hammarskjold also enjoyed the couple of years free from major East-West clashes. Thus, he was able to build up a store of confidence from both sides before circumstances forced on him a more active role.³¹ In the end his actions and ideas brought him and his office under bitter attack from the representatives of the Soviet Union, who perceived his claims as inimical to great power sovereignty and dominance in world politics.³²

29. S.S. Goodspeed, n. 18, pp. 343-49.

30. D.W. Greig, n. 4, p. 586.

31. H.G. Nicholas, n. 12, p. 173.

32. A.L. Bennet, n. 21, p. 341.

One of Hammarskjold's earliest assignments that allowed him some leeway in exercising his diplomatic talents, in pursuance of a General Assembly resolution in December, 1954, requesting him to obtain the release of fifteen American flyers downed on United Nations mission and imprisoned in China. The Assembly resolution provided no specific guidelines and permitted Hammarskjold to use "the means appropriate in his judgement". Since the resolution also condemned the Chinese action, Hammarskjold wisely decided to use, instead, as his basis of authority for a mission of Peking, his general authority as Secretary-General. Although no dramatic announcement followed his four-day visit, all the flyers were released within this next seven months.

However, what the most Americans believed about the efforts of Hammarskjold, the New York Times observed: "there ought to be a feeling of gratitude and satisfaction to the Secretary-General of the United Nations, Dag Hammarskjold, for the earnest efforts he made to obtain the release of these men. He pursued that the obligations have been properly improved upon him. The 'Flight to Peiping' established a mystique of success about the man that was helpful in coping with other challenges that were not long in coming."

The Suez Canal crisis of 1956 provided much broader mandates and opportunity for the exercise of discretion and initiative by

33. Ibid. Also see D.W. Greig, n. 4, p. 586; also see H.G. Nicholas, n. 12, p. 173.

34. R.I. Miller, n. 16, p. 55.

the Secretary-General. The Council was deadlocked by British and French vetoes requiring an emergency session of the General Assembly³⁵ under the 'Uniting for Peace Resolution'. The resolution setting up a United Nations Force authorized the Secretary-General "to issue regulations and instructions which may be essential ... and to take over the necessary administrative and executive action ...". The extraordinary powers given to the Secretary-General required³⁶ a real "margin" of confidence on the part of member states.

All of the guidelines, details for raising a peace-keeping force, and the actual direction of the operations were delegated to Hammarskjold by the General Assembly. Negotiations with the governments that were to furnish personnel as well as with the belligerents for the withdrawal of their forces were necessary. Egypt finally agreed to the deployment of United Nations forces upon parts of its territory after Israel's refusal to accept such an occupying group and the first UNEF troops reached Egyptian territory eleven days after the adoption of the General Assembly's resolution. A new principle evolved with the formation of the UNEF.

Peace-keeping by a police-type force was substituted for collective security action dependent upon the might of the major powers. The Secretary-General directed the forces through his appointee, General Burns of Canada, in contrast to the earlier arrangement in Korea that the United States furnish the direction³⁷ of the combined forces there.

35. A.L. Bennet, n. 21, p. 341.

36. R.I. Miller, n. 16, p. 93.

37. A.L. Bennet, n. 21, p. 341.

Hammaraskjold also assumed responsibility for the clearing of the Suez Canal, which had been blocked by ships sunk by the Egyptians. The task was completed within four months (which was ahead of all predictions) by a salvage operation involving personnel³⁸ or equipment from at least eight countries.

The Egyptian seizure of the Suez Canal in 1956 presented the Secretary-General an opportunity to employ his good offices³⁹ to reach some compromise among the nations most directly concerned.

The Hungarian crisis, which occurred almost simultaneously with the Suez dispute and the Secretary-General was given almost as much authority and freedom of action in resolutions passed on Hungary as in resolutions passed on the Suez crisis. The Assembly asked him "to investigate the situation in Hungary" on one occasion and "to take any initiative he deems helpful", on another. In other words,⁴⁰ Hammaraskjold was given a free hand regarding he might proceed.

The Secretary-General made two statements during this crisis period which particularly relevant to his role in the Hungarian crisis:

- (1) "As a servant of the organization, the Secretary-General has the duty to maintain his usefulness by avoiding public stands

38. Ibid.

39. S.S. Goodspeed, n. 18, p. 352.

40. R.I. Miller, n. 16, p. 150.

on conflicts unless and until such an action might help to resolve the conflict".

- (2) "Were the members to consider that another view of the duties of the Secretary-General that the one have stated would better serve the interests of the organization, it is their obvious right to act accordingly".⁴¹

Consequently, Hammarskjold could do little to achieve a political settlement in Hungary. It is not quite correct to say that he was failed in arranging political settlement in Hungary; it is more accurate to say that he never had a reasonable chance⁴² for success.

The Lebanese crisis of 1958 demonstrates Hammarskjold's interpretation of his independent position.⁴³ However, the Security Council created an observer group, United Nations Observation Group in Lebanon (UNOGIL) to investigate the Lebanese complaint of intervention by the United Arab Republic in its internal affairs. A month later, in the face of increasing infiltration by the UAR armed bands from Syria into Lebanon and supply of arms to rebellious groups inciting the overthrow of the Lebanese Government, the Lebanese Government sought American assistance and a force of US marines was landed in Lebanon.⁴⁴ When the Security Council was unable to reach an agreement upon how the UNOGIL should be expanded to

41. *Ibid.*, pp. 150-51.

42. *Ibid.*, p. 153.

43. A.L. Bennet, n. 21, p. 342.

44. D.W. Greig, n. 4, p. 386.

meet the increasingly serious internal conflict in Lebanon, the Secretary-General boldly stepped into the "vacuum" and did what a Japanese resolution had proposed to do. A move which helped in bringing the normalisation of the situation and the withdrawal of the US troops. The Secretary-General was very active behind the scenes during the Lebanese crisis, particularly during the later phases and he came out of the Lebanese crisis with more personal prestige and power than ever before. Hence, about the working of Hammarskjold in the Lebanese crisis, Sir Leslie Munro said: "May I in conclusion - and I feel I am speaking for the whole Assembly - express my answering confidence in the great abilities of our distinguished Secretary-General and wish him well in the discharge of the responsibilities which the Assembly has now entrusted to him."

However, the United Nations presence in Jordan was the first such operation established by the Secretary-General without direct authorisation from the General Assembly or the Security Council. The United Nations presence in Jordan developed "stage by stage" and only one of the three ideas Hammarskjold originally thought of possible use was put into operation. The Secretary-General originally suggested (a) a non-military United Nations presence of some sort in Jordan; (b) an ambassador assigned to the United Nations head-

45. R.I. Miller, n. 16, p. 206.

46. D.W. Greig, n. 4, p. 386.

47. R.I. Miller, n. 16, p. 207.

48. Ibid., p. 220.

quarters, and (c) liaison offices in Beirut and Damascus. Consequently, the major credit for the eminent success of the Jordanian success⁴⁹ must go to the Secretary-General.

Independent action by Hammarskjold was demonstrated by the situations in the dispute between Cambodia and Thailand in 1958-60, and in the internal conditions of Laos in 1959-61. In the Cambodian-Thailand dispute, Hammarskjold advised against taking the matter to the Security Council in order to avoid any possible hardening of conflicting East-West position. With informed consent from the major powers, he appointed a personal special representative, who brought about a reconciliation between the two countries. When a further dispute flared up in 1960, another special representative of the Secretary-General conducted negotiations with the Cambodian and the Thai diplomats at the UN headquarters in New York, which led⁵⁰ to the signing of terms of settlement.

In the Laotian situation, Hammarskjold twice made personal visits to Laos to urge a position of neutrality in accordance with the Geneva agreements of 1954. Hammarskjold resisted requests from the Laotian government for the establishment of a peace-keeping force in Laos, but following his second visit, he appointed a series of personal representatives, who were only temporarily⁵¹ successful in delaying the effects of outside intervention.

49. Ibid., p. 221.

50. A.L. Bennet, n. 21, p. 342.

51. Ibid., pp. 342-43.

The Secretary-General also acted on the invitation of the Government of South Africa, which refused to submit to the intervention of the Security Council in the matter of segregation policies⁵² but agreed to consultations of the Secretary-General.

Hammaraskjold's assumptions of independent authority reached their highest peak and met their greatest challenge in the Congo crisis of 1960-61.⁵³ In July, 1960, the Secretary-General was requested to provide military assistance to the central government of the Republic of the Congo (Leopoldville). In the basic mandate given to the Secretary-General the Security Council authorized him "to take the necessary steps, in consultation with the Government of the Republic of the Congo, to provide the government with such military assistance as may be necessary, until through the efforts of the Congolese government. With technical assistance of the United Nations, the national security force may be able, in the opinion of the government, to meet fully their tasks. Additional guidance was provided by a set of principles concerning the use of the UN force which had been evolved during the experience of the UNEF. The Secretary-General informed the Security Council that he would base his action on these principles subject to their further elaboration as applicable to the Congo operation. A report on the matter was approved by the Security Council, but naturally it proved to leave gaps. In these circumstances, the Secretary-General asked the Council for an interpretation of his mandate (delegated powers) in the light

52. R.A. Falk and S.H. Mendlovitz (eds), n. 13, p. 316.

53. A.L. Bennet, n. 21, p. 343.

of unforeseen events in the Congo. In the absence of further guidance, he was left with the question how to proceed further, particularly whether to terminate the Congo operation or to fill the gap in his mandate by reliance on legal factors which would allow him to answer outstanding questions and to implement the mandate in spite of no
⁵⁴
 guidance.

However, within the Republic of the Congo, there were three rival political groups - the Presidential group, Prime Minister Lumumba's group and army led by the Chief of Staff. In these circumstances, the Secretary-General was confronted with the problem of how to implement his mandate and to whom to give the assistance
⁵⁵
 stipulated in the decision of the Security Council. Hence, because of the confused political situation in Congo and the clash of external interests, both the Security Council and the General Assembly became increasingly inadequate, and Hammarskjold was faced with making personal decisions or refusing to act at all. In assessing his responsibilities, Hammarskjold rejected the course of inaction. He declared that, instead, his decision, regardless of offence to any member states, should be based on:

1. Charter principles and purposes;

54. 'Dag Hammarskjold: The International Civil Servants in Law and in Fact', in Gregg, R.W. and Barkun M.(eds.), The United Nations System and its Functioning: Selected Readings; see also A.R. Falk and S.H. Mendlovitz, n. 13, p. 318.

55. R.A. Falk and S.H. Mendlovitz, n. 13, p. 319.

2. widely accepted legal rules and precedents, especially those found in the United Nations resolution;
3. consultation with the personnel of the permanent mission to the United Nations or with advisory committees of the type established for the UNEF and Congo operations, and finally,
4. his own personal judgement based on his integrity and exercise of conscience with self-examination concerning his objectivity and neutrality.⁵⁶

However, the Soviet Union had become increasingly jealous of the success and prestige of the Secretary-General. They demanded the resignation of Hammarskjold and proposed that the Secretary-General should be replaced by a "collective executive body of the United Nations (Troika) comprising of three equal Secretaries-General - one representing the East, one the West, and one representing non-aligned countries."⁵⁷

Hammarskjold refused to resign and defended the integrity of his office.⁵⁸ The responsibility for the Congo operation was given to the Secretary-General and he reminded his delegates, by decisions of the Security Council.

"This is your operation gentlemen. It is for you to indicate what you want to have done. He was grateful for any "positive advice"

56. A.L. Bennet, n. 21, p. 343.

57. R.I. Miller, n. 16, pp. 297-98.

58. A.L. Bennet, n. 21, p. 343.

but if it was not forthcoming "then I have no choice but to follow my own conviction, guided by the principles to which I have just⁵⁹ referred.

The major support received by Dag Hammarskjold in his Congo policies from the non-aligned and uncommitted states and India, for instance, generally regarded as the leading neutralist at that time, invariably supported Dag Hammarskjold in the General Assembly on⁶⁰ the Secretary-General's Congo policies. Hence, Hammarskjold secured the authority he desired to 'recognize' the Congo national army and to take immediately all appropriate measures to prevent the occurrence of civil war in the Congo, including the use of force, if necessary, in the last resort' - an unprecedented licence to interfere in internal affairs. Gradually, however, the situation in the Congo relaxed and in July a nearly all-faction meeting of the Congolese parliament was held under UN protection and established an 'all Congo'⁶¹ government under Adoula. But the Provincial Government of Katanga refused to recognize its authority.

Hammarskjold's last mission for the United Nations was a trip to the Congo for the purpose of trying to mediate a settlement Moise Tshombe, the head of the Katanga government, and the Premier Adoula of the central government. But on September 18, 1961, while Hammarskjold on a route to crucial meeting concerning the former

59. R.I. Miller, n. 16, p. 296.

60. U Thant, n. 8, p. 35.

61. H.G. Nicholas, n. 12, p. 185.

Belgian Congo, had died the day before in a plane crash near Nadola⁶² in Northern Rhodesia (now Zambia).

From 1961 to 1971, U Thant witnessed, and often actively mediated, the bitter controversies and tragic confrontations that took place in the world. But, however, during his ten year term as Secretary-General, he kept the support of the Big Powers and acted as a spokesman on the issue of greatest concern to the developing nations. Throughout his tenure of office, he was plagued by the financial crisis that the members were unable or unwilling to resolve. He played a constructive role in the political disputes such as those involving the Congo, Cyprus, West Irian, the Arab-Israeli war of 1967 and the Cuban missile crisis. He was criticised in some quarters for the rapid withdrawal of the UNEF forces from the Middle East in 1967. He was outspoken but ineffective in trying⁶³ to bring an end to Vietnam War. During the course of dispute between the United Arab Republic and Saudi Arabia over Yemen, the Secretary-General took the initiative in arranging a ceasefire, and on his own responsibility sent observers in checking on compliance. In 1970, the Secretary-General U Thant was asked by Iran and the United Kingdom to exercise his good offices with a view to ascertaining the wishes of the people of Bahrain with respect to the future status of the Islands. The conclusion of the Secretary-General's personal representative that the people of Bahrain desired independence

62. U Thant, n. 8, p. 3.

63. A.L. Bennet, n. 21, p. 344.

was accepted by Iran and the United Kingdom, and subsequently⁶⁴ ratified by the Security Council.

U Thant played an important role in the India-Pakistan conflict in 1965. The Security Council was asked to "exert every possible effort" to bring about a cessation of hostilities. He took a bold initiative and suggested that the Security Council ordered the two governments to desist from further hostilities and warned that if they failed to comply, the Council would take action under Article 39 of the Charter. The parties acceded to the Council's demand for a ceasefire. U Thant was asked to provide the necessary⁶⁵ assistance to ensure supervision of the ceasefire.

Further, in general, U Thant maintained the principles established by Lie and Hammarskjold and judicially exercised the previously established prerogatives.

U Thant's successor, Kurt Waldheim continued along a similar line. He believed that the 1975 is crucial for West Asia. According to him, it would be the moment of decision between war and peace in West Asia. He was confident about the UN's peace-keeping efforts in resolving the disputes. He favoured the renewal of the mandate of UN disengagement observer force which was to expire on November 30, 1974. Waldheim stressed that there could be no satisfactory settlement of the West Asia conflict unless the problem of Palestinians was⁶⁶ resolved.

64. See Report of the Secretary-General on the Work of the Organization, 16 June 1969 - 15 June 1970 (GA, OR, 25th Session, Suppl.1), pp. 70-74.

65. A.L. Bennet, n. 21, p. 344.

66. The Hindustan Times (New Delhi), November 20, 1974.

The Secretary-General, Kurt Waldheim, was confident about the future peace-keeping role of the United Nations. In contemporary world politics, an important role for the Secretary-General is highly desirable.

The present Secretary-General, Javier Perez de Cuellar, since 1982, is quietly trying to do his best to reduce tensions in the areas of conflicts. He visited South Africa and consulted the South African leaders, met in Cape Town with internal party leaders and with the leadership of SWAPO in Angola so that issues regarding the implementation of UN independence plan for Namibia could be implemented, without which real progress could not be claimed. He wants that "impatience of Namibian people who were suffering not only for their denial of their legitimate aspirations for gaining self-determination ... and uncertainty about their future" could lead to disastrous result. The 'Proximity Talks' between Afghanistan and Pakistan arranged by him held many meetings till now. The Secretary-General through his representative, who is acting as go-between, trying to solve Afghanistan crisis, has also reduced tensions in all areas of conflicts.

However, it is not altogether easy to explain the role of the Secretary-General in the field of international peace and security. To an extent, the Secretary-General's role depends upon the personality of the holder of the office.

67. UN Weekly Newsletter (New Delhi: UN Information Centre), Vol.34, No. 32, September 9, 1983.

68. D.W. Greig, n. 4, p. 587.

Within the restrictions placed upon the role of the Secretary-General by the present international situation, the Secretary-General has an important part to play as a spokesman for the United Nations. He was able to act externally on behalf of the organization and internally as a make-weight in the balance of weight between the major powers.⁶⁹

However, Article 99 of the UN Charter, which gives him this right, lies not so much in the specific powers that is given as its implication that the Secretary-General, unlike his League counterparts, is to have an important responsibility for making the Organization effective in its primary purpose - the maintenance of international peace and security.⁷⁰

Apart from the powers that are given to the Secretariat by the explicit provisions of the Charter, the Secretary-General has, as the head of one of the principal organs, asserted the right and duty to take certain initiatives to achieve the purpose of the Organization, particularly in the maintenance of peace and security. In this connection, he has offered his services as a mediator when such an offer, in his judgement, is likely to provide an acceptable procedure for the settlement or accommodation of an existing dispute or tension.⁷¹

69. Ibid., p. 587.

70. L.M. Goodrich, The United Nations in Changing World (New York: Columbia University Press, 1974), p. 85.

71. Ibid., p. 94.

CONCLUSION

CONCLUSION

Under the Charter the Secretary-General is the chief administrative officer of the United Nations. In that capacity, he is responsible for securing the highest standards of efficiency, competence and integrity throughout the Secretariat. He should be regarded as the head of a staff of International Civil Servants, who are not to be influenced in the performance of their duties by national, ideological or personal consideration of any kind. "Once a member of the Secretariat is influenced in any way by any authority external to the Organization, he ceases to be a truly International Civil Servant. Article 100 of the UN Charter provides that "In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization".

Undoubtedly, an international official is not expected to give up his private opinions on national prejudices but he is asked to subordinate to the interest of the United Nations so long as he is a member of the Secretariat. It is the duty of the Secretary-General to ensure that the personnel of the Secretariat do not deviate from the norms and principles of the international civil service.

The independence and international character of the Secretariat requires not only resistance, but also an independent implementation

of controversial political decisions in a manner fully consistent with the exclusively international responsibility of the Secretariat.

Further, the administrative responsibility of the Secretary-General under Article 97 involves the essential tasks of preparing the ground for the decisions of the organs and of "executing" them in cooperation with the members. His administrative functions make him the channel of communication between the members and the organs of the United Nations. He must supervise the preparation of work for coordinating the widespread activities of the United Nations. No other organ or official is in the same position as the Secretary-General as far as the over-all integration is concerned. This is particularly true with respect to bringing the Specialized Agencies into relationship with the United Nations. The Secretary-General has the responsibility for seeing that necessary secretarial services provided for the General Assembly, the Security Council, ECOSOC, the Trusteeship Council and the large number of subsidiary organs and special bodies set up to do the work of the United Nations. In addition, he is responsible for directing and supervising a wide range of technical services such as the preparation of background paper, the preparation of reports and periodical publications, and a multitude of other special technical tasks which the Secretariat may be asked to perform by the General Assembly or the Council. Furthermore, he is responsible for personnel administration, including appointments, promotions and disciplinary action. He must oversee the administration of the finances of the Organization.

However, the central responsibility for achieving coordination

of the policies and activities of the United Nations itself and the various Specialized Agencies is placed on the General Assembly and the Economic and Social Council, acting under its authority. In practice, it has been found that the major part of this responsibility should be delegated to the Secretary-General. Thus, his responsibilities as chief coordinator are of the greatest importance in making the Organization effective in dealing with the wide range of economic, social and technological problems which assume increased importance with each passing day.

However, Article 97 is followed by Articles 98 and 99. Article 98 of the UN Charter provides that "the Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization." In addition Article 99 provides that "the Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security". The effect of Article 99, when coupled with Article 98, is to give the Secretary-General an important position, almost that of an additional member of the Security Council (though not voting member). Trygve Lie wrote of Article 99 that it conferred upon the Secretary-General, no representative of a single nation, ever had before. Hence, the Secretary-General, under Article 99 of the Charter, is also a high political officer. In that capacity he may take the lead in dealing with matters that may threaten the maintenance of

international peace and security. Thus, according to Article 99, the Secretary-General is given a double discretion.

Legal scholars have observed that Article 99 not only confers upon the Secretary-General a right to bring matters to the Security Council but also that this right carries with it by necessary implication, a broad discretion to conduct enquiries and to engage in informal diplomatic activity in this regard to matters which may threaten the maintenance of international peace and security.

It is the Secretary-General's broader political powers which provide the contrast between the role of the United Nations Secretary-General and that of the League Secretary General. That the Secretary-General should have broader political role was clearly desired by those who wrote the Charter, but what was not and could not be anticipated was the exact form that role would assume. The Secretary-General represents the Organization in its relations with member governments and its external relations generally. In his relation with member governments, he serves as a useful source of information, and advisor, and a stimulator of policies and action in support of the United Nations purposes and principles. In addition, formal agreements with governments and other organizations are concluded by the Secretary-General, although as a rule they require the approval of the General Assembly.

The Secretary-General also acts as a spokesman of the Organization in reporting on its work and making suggestions for its greater effectiveness.

Hammarskjöld emphasised the concept of the Secretary-General as "the trusted consultants of all sides". He saw the East-West conflict as the supreme challenge confronting the Organization. The Secretary-General was indispensable as the "link" between East and West and he should not mix into the affairs of member states. Consequently, the Secretary-General plays a vital role in the maintenance of international peace and security. However, the primary responsibility for the maintenance of peace and security has been given to the Security Council and the member states of the United Nations have agreed to accept and carry out the decisions of the Security Council. But owing to excessive use of veto, matters relating to peace and security from being "frozen" on the Security Council agenda which reduced to "impotence" the Organization as a whole. In fact, only once in the history of the United Nations, the Security Council could take collective action (Korean crisis) and that, too, only of the absence of Soviet Russia which was boycotting the Security Council meeting. It was then realized by the General Assembly and the General Assembly passed three closely connected resolutions, the first of which is usually termed the 'Uniting for Peace Resolution'. Its intention was to create a nucleus of collective security outside the Security Council. Definitely, the resolution strengthened the position of the Secretary-General. It is a transfer-device and a shift of powers from the veto-ridden Security Council to the veto-less General Assembly. This strengthened the position of the Security Council as the burden of peace-keeping under the authority of the General Assembly lies on the shoulders of the Secretary-General.

The Secretary-General has become the key-figure in the UN crisis diplomacy. He has become the central figure in almost all the UN peace-keeping operations. The Secretary-General has to perform a very difficult job rather "the most impossible" job in the world.

Such a person is appointed by the General Assembly on the recommendation of the Security Council. The concurrence of the Permanent Members was made compulsory. The practice has been for the Security Council to agree upon a candidate and for the Assembly to appoint that candidate. In effect, the Secretary-General is the Permanent Members' "nominee". Consequently, there is hinderance in performing his job effectively, efficiently, impartially and independently.

Whenever, the Secretary-General takes decisions which injures the interest of any of the Big Five, he becomes the victim of their criticism. The Russian insulted the first Secretary-General personally, and boycotted him socially and officially. The USSR was also not happy with Dag Hammarskjold, the second Secretary-General. They also wanted his removal and advocated "Troika" proposal to abolish the post of the Secretary-General.

In fact, from the beginning of the procedure till the completion of the tenure, the Secretary-General first as a candidate and then as the occupant of the office acts under great strains and behaves with much restraints.

The Secretary-General is assigned to be a central role as an administrator and as a leader. The international character, loyalty

and independence of the Secretariat is fundamental to the effectiveness of an international service and it is the duty of the Secretary-General to ensure it which in turn will help diminish world tension. Consequently, the Secretary-General is expected to play a very important role for a healthy, happy and prosperous international society. Obviously, such a person (Secretary-General) should not only be a "nominee" of the Big Five. Logically, it has become necessary in the interest of international society to amend Article 97. The amendment should be made on the "Authority-cum-Accountability" basis so that he could function fearlessly, independently, efficiently and impartially.

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APPENDIX

APPENDIX

UNITED NATIONS CHARTER

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to man, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

to practise tolerance and live together in peace with one another as good neighbours, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS

Accordingly, our respective Governments, through representatives assembled in the City of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

CHAPTER I. PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end; to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles;

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.
6. The Organization shall ensure that States which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

CHAPTER II. MEMBERSHIP**Article 3**

The original Members of the United Nations shall be the States which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

Article 4

1. Membership in the United Nations is open to all other peace-loving States which accept the obligations contained in the present Charter, and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. The admissions of any such State to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

Article 5

A member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

Article 6

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

CHAPTER III. ORGANS**Article 7**

1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

Article 8

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

CHAPTER IV. THE GENERAL ASSEMBLY

Article 9 Composition

1. The General Assembly shall consist of all the Members of the United Nations.
2. Each Member shall have not more than five representatives in the General Assembly.

Functions and Powers

Article 10

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Article 11

1. The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.
2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a State which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the State or States concerned or to the Security Council or to both. Any such question, on which action is necessary, shall be referred to the Security Council by the General Assembly either before or after discussion.
3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.
4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

Article 13

1. The General Assembly shall initiate studies and make recommendations for the purpose of:-

- (a) promoting international co-operation in the political field and encouraging the progressive development of international law and its codification;
- (b) promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. The further responsibilities, functions, and powers of the General Assembly with respect to matters mentioned in paragraph 1(b) above are set forth in Chapters IX and X.

Article 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

Article 15

1. The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.

2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

Article 16

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

Article 17

1. The General Assembly shall consider and approve the budget of the Organization.

2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

Voting

Article 18

1. Each Member of the General Assembly shall have one vote.

2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the Members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1(c) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the Members present and voting.

Article 19

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

Procedure

Article 20

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.

Article 21

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.

Article 22

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

CHAPTER V. THE SECURITY COUNCIL

Composition

Article 23

1. The Security Council shall consist of ¹fifteen Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance, to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.

2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members after the increase of the membership of the Security Council from eleven to fifteen, two of the four additional members shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.

3. Each member of the Security Council shall have one representative.

Functions and Powers

Article 24

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

(1) As amended, the original text of Article 23 reads as follows:

1. The Security Council shall consist of eleven Members of the United Nations, The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect six other Members of the United Nations to be non-permanent members of the Security Council,....". (Contd.)

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3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Article 25

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Article 26

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

(2)

Voting

Article 27

1. Each member of the Security Council shall have one vote.
2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote ~~and~~ of nine members.
3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

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2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of non-permanent members, however, three shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.

3. Each member of the Security Council shall have one representative

(2) As amended, the original text of Article 27 reads as follows:-

- "1. Each member of the Security Council shall have one vote.
2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of seven members.
3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of seven members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting".

Procedure

Article 28

1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.

2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.

3. The Security Council may hold meetings at such places other than the seat of the Organisation as in its judgment will best facilitate its work.

Article 29

The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

Article 30

The Security Council shall adopt its own rules of procedure, including the method of selecting its President.

Article 31

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.

Article 32

Any Member of the United Nations which is not a member of the Security Council or any State which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a State which is not a Member of the United Nations.

CHAPTER VI. PACIFIC SETTLEMENT OF DISPUTES

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to national agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

2. A State which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present charter.

3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

CHAPTER VII. ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION.

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the prompt use of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory States in accordance with their respective constitutional processes.

Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any State are taken by the Security Council, any other State, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

CHAPTER VIII. REGIONAL ARRANGEMENTS

Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action; provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the States concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy State, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such State, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a State.

2. The term 'enemy State' as used in paragraph 1 of this Article applies to any State which during the Second World War has been an enemy of any signatory of the present Charter.

Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

CHAPTER IX. INTERNATIONAL ECONOMIC AND SOCIAL CO-OPERATION

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- (a) higher standards of living, full employment, and conditions of economic and social progress and development;
- (b) solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and

- (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

Article 57

1. The various specialized agencies, established by inter-governmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

Article 58

The Organization shall make recommendations for the co-ordination of the policies and activities of the specialized agencies.

Article 59

The Organization shall, where appropriate, initiate negotiations among the States concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

Article 60

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly, and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

CHAPTER X. THE ECONOMIC AND SOCIAL COUNCIL

Composition

Article 61

1. The Economic and Social Council shall consist of twenty-seven Members of the United Nations elected by the General Assembly.

2. Subject to the provisions of paragraph 3, nine members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.

3. At the first election after the increase in the membership of the Economic and Social Council from eighteen to twenty-seven members, in addition to the members elected in place of the six members whose term of office expires at the end of that year, nine additional members shall be elected. Of these nine additional members, the term of office of three members so elected shall expire at the end of one year, and of three other members at the end of two years, in accordance with arrangements made by the General Assembly.

4. Each member of the Economic and Social Council shall have one representative.²

Functions and Powers

Article 62

1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.

2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

Article 63

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

2. It may co-ordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

3. As amended. The original text of Article 27 reads as follows:-

1. The Economic and Social Council shall consist of eighteen Members...
2. Subject to the provisions of paragraph 3, six members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.
3. At the first election, eighteen members of the Economic and Social Council shall be chosen. The term office of six members so chosen shall expire at the end of one year, and of six other members at the end of two years
4. Each member of the Economic and Social Council shall be one representative."

Article 64

1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.

2. It may communicate its observations on these reports to the General Assembly.

Article 65

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

Article 66

1. The Economic and Social Council shall perform such functions as fall within its competence in connexion with the carrying out of the recommendations of the General Assembly.

2. It may, with the approval of the General Assembly, perform services at the request of Members of the United Nations and at the request of specialized agencies.

3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

Voting**Article 67**

1. Each member of the Economic and Social Council shall have one vote.

2. Decision of the Economic and Social Council shall be made by a majority of the members present and voting.

Procedure**Article 68**

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

Article 69

The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on the matter of particular concern to that Member.

Article 70

The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it and for its representatives to participate in the deliberations of the specialized agencies.

Article 71

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence.

Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Members of the United Nations concerned.

Article 72

1. The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its President.
2. The Economic and Social Council shall meet as required in accordance with its rules, which shall include provisions for the convening of meetings on the request of a majority of its members.

CHAPTER VI. DECLARATION REGARDING NON-SELF GOVERNING TERRITORIES

Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and to this end;

- (a) to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- (b) to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;
- (c) to further international peace and security;
- (d) to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where

appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and

- (e) to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

CHAPTER XII. INTERNATIONAL TRUSTEESHIP SYSTEM

Article 75

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

Article 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

- (a) to further international peace and security;
- (b) to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the people concerned, and as may be provided by the terms of each trusteeship agreement;
- (c) to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and
- (d) to ensure equal treatment in social, economic and commercial matters for all Members of the United Nations and their

nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

Article 77

1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:

- (a) territories now held under mandate;
- (b) territories which may be detached from enemy States as a result of the Second World War; and
- (c) territories voluntarily placed under the system of States responsible for their administration.

2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

Article 78

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

Article 79

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the States directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

Article 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any States or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

Article 81

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more States or the Organization itself.

Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

Article 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.
2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.
3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

Article 84

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defence and the maintenance of law and order within the trust territory.

Article 85

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.
2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

CHAPTER XIII. THE TRUSTEESHIP COUNCIL

Composition

Article 86

1. The Trusteeship Council shall consist of the following Members of the United Nations;
 - (a) those Members administering trust territories;
 - (b) such of those Members mentioned by name in Article 23 as are not administering trust territories; and
 - (c) as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.
2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

Functions and Powers

Article 87

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

- (a) consider reports submitted by the administering authority;
- (b) accept petitions and examine them in consultation with the administering authority;
- (c) provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and
- (d) take these and other actions in conformity with the terms of the trusteeship agreements.

Article 88

The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

Voting

Article 89

1. Each member of the Trusteeship Council shall have one vote.
2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

Procedure

Article 90

1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.
2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

Article 91

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

CHAPTER XIV. THE INTERNATIONAL COURT OF JUSTICE

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 93

1. All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice.
2. A State which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Article 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.
2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgement.

Article 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Article 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.
2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

CHAPTER XV. THE SECRETARIAT

Article 97

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

Article 98

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

Article 99

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

Article 100

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any Government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.
2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

CHAPTER XVI. MISCELLANEOUS PROVISIONS

Article 102

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

Article 103

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Article 104

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

Article 105

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

CHAPTER XVII. TRANSITIONAL SECURITY ARRANGEMENTS

Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

Article 107

Nothing in the present Charter shall invalidate or preclude action, in relation to any State which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

CHAPTER XVIII. AMENDMENTS

Article 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations, including all the permanent members of the Security Council.

Article 109

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote in the conference.
2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations including all the permanent members of the Security Council.
3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

CHAPTER XIX. RATIFICATION AND SIGNATURE

Article 10

1. The present Charter shall be ratified by the signatory States in accordance with their respective constitutional processes.
2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory States of each deposit as well as the Secretary-General of the Organization when he has been appointed.
3. The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America and by a majority of the other signatory States. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory States.
4. The States signatory to the present Charter which ratify it after it has come into force will become original Members of the United Nations on the date of the deposit of their respective ratifications.

Article 11

The present Charter, of which the Chinese, French, Russian, English, and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory States.

In faith whereof the representatives of the Governments of the United Nations have signed the present Charter.

Done at the City of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

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